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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 RAFAEL OCHOA,

16 Defendant.

No. CR 2:23-cr-00003-FMO

PLEA AGREEMENT FOR DEFENDANT
RAFAEL OCHOA

17
18 1. This constitutes the plea agreement between RAFAEL OCHOA
19 ("defendant") and the United States Attorney's Office for the Central
20 District of California (the "USAO") in the above-captioned case.
21 This agreement is limited to the USAO and cannot bind any other
22 federal, state, local, or foreign prosecuting, enforcement,
23 administrative, or regulatory authority.

24 RULE 11(c)(1)(C) AGREEMENT

25 2. Defendant understands that this agreement is entered into
26 pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C).
27 Accordingly, defendant understands that, if the Court determines that
28 it will not accept this agreement, absent a breach of this agreement

1 by defendant prior to that determination and whether or not defendant
2 elects to withdraw any guilty plea entered pursuant to this
3 agreement, this agreement will, with the exception of paragraph 22
4 below, be rendered null and void and both defendant and the USAO will
5 be relieved of their obligations under this agreement. Defendant
6 agrees, however, that if defendant breaches this agreement prior to
7 the Court's determination whether or not to accept this agreement,
8 the breach provisions of this agreement, paragraphs 25 and 26 below,
9 will control, with the result that defendant will not be able to
10 withdraw any guilty plea entered pursuant to this agreement, the USAO
11 will be relieved of all of its obligations under this agreement, and
12 the Court's failure to follow any recommendation or request regarding
13 sentence set forth in this agreement will not provide a basis for
14 defendant to withdraw defendant's guilty plea.

15 DEFENDANT'S OBLIGATIONS

16 3. Defendant agrees to:

17 a. Give up the right to indictment by a grand jury and,
18 at the earliest opportunity requested by the USAO and provided by the
19 Court, appear and plead guilty to a single-count information, in the
20 form attached to this agreement as Exhibit A or a substantially
21 similar form, which charges defendant with possession with intent to
22 distribute methamphetamine, in violation of Title 21, United States
23 Code, Sections 841(a)(1), (b)(1)(A)(viii).

24 b. Admit the allegations of the Petition for Action of
25 Court for Cause regarding revocation of defendant's supervised
26 release in United States v. Rafael Ochoa, CR No. 17-00635-GW (C.D.
27 Cal.), at the next scheduled appearance in that matter.

28 c. Not contest facts agreed to in this agreement.

1 d. Abide by all agreements regarding sentencing contained
2 in this agreement and affirmatively recommend to the Court that it
3 impose sentence in accordance with paragraph 17 of this agreement.

4 e. Appear for all court appearances, surrender as ordered
5 for service of sentence, obey all conditions of any bond, and obey
6 any other ongoing court order in this matter.

7 f. Not commit any crime; however, offenses that would be
8 excluded for sentencing purposes under United States Sentencing
9 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not
10 within the scope of this agreement.

11 g. Be truthful at all times with the United States
12 Probation and Pretrial Services Office and the Court.

13 h. Pay the applicable special assessment at or before the
14 time of sentencing unless defendant has demonstrated a lack of
15 ability to pay such assessments.

16 THE USAO'S OBLIGATIONS

17 4. The USAO agrees to:

18 a. Not contest facts agreed to in this agreement.

19 b. Upon filing the information in this matter, file a
20 Notice to Court of Related Criminal Case with respect to United
21 States v. Rafael Ochoa, CR 17-00635-GW (C.D. Cal.).

22 c. To recommend that the sentence imposed for violation
23 of supervised release in United States v. Rafael Ochoa, CR 17-00635-
24 GW (C.D. Cal.), run concurrent with the sentence imposed by the Court
25 in the above-captioned matter, such that the total term of
26 imprisonment on both matters be the agreed-upon sentence discussed
27 below. Defendant understands and agrees that the USAO's sentencing
28 recommendation in connection with defendant's supervised release

1 proceeding is not governed by Federal Rule of Criminal Procedure
2 11(c)(1)(C) and is not binding on the Court. Accordingly, defendant
3 also understands and agrees that, provided the Court imposes the
4 parties' agreed-upon sentence set forth in paragraph 17 below,
5 defendant will not be relieved of his obligations under this
6 agreement or provided an opportunity to withdraw his plea of guilty
7 if the Court imposes a sentence in connection with defendant's
8 supervised release proceeding other than the sentence recommended by
9 the USAO.

10 d. Except for criminal tax violations (including
11 conspiracy to commit such violations chargeable under 18 U.S.C.
12 § 371), not further criminally prosecute defendant for violations of
13 21 U.S.C. § 841(a)(1) arising out of defendant's conduct described in
14 the agreed-to factual basis set forth in paragraph 13 below, nor file
15 an information against defendant pursuant to Title 21, United States
16 Code, Section 851. Defendant understands that the USAO is free to
17 criminally prosecute defendant for any other unlawful past conduct or
18 any unlawful conduct that occurs after the date of this agreement.
19 Defendant agrees that, at the time of sentencing, the Court may
20 consider the uncharged conduct in determining the applicable
21 Sentencing Guidelines range, the propriety and extent of any
22 departure from that range, and the sentence to be imposed after
23 consideration of the Sentencing Guidelines and all other relevant
24 factors under 18 U.S.C. § 3553(a).

25 e. Abide by all agreements regarding sentencing contained
26 in this agreement and affirmatively recommend to the Court that it
27 impose sentence in accordance with paragraph 17 of this agreement.
28

NATURE OF THE OFFENSE

5. Defendant understands that for defendant to be guilty of the crime charged in the single-count information, that is possession with intent to distribute methamphetamine, in violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(A)(viii), the following must be true: first, defendant knowingly possessed at least 50 grams of methamphetamine; and second, defendant possessed it with intent to distribute it to another person. To possess with intent to distribute means to possess with intent to deliver or transfer possession to another person, with or without any financial interest in the transaction. It does not matter whether defendant knew that the substance was methamphetamine. It is sufficient that defendant knew it was some type of federally controlled substance.

6. Defendant understands that for defendant to be subject to the statutory maximum and statutory minimum sentences set forth below, the government must prove beyond a reasonable doubt that defendant possessed with intent to distribute at least 50 grams of methamphetamine. Defendant admits that defendant, in fact, possessed with intent to distribute at least 50 grams of methamphetamine.

PENALTIES

7. Defendant understands that the statutory maximum sentence that the Court can impose for a violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(A)(viii), is: life imprisonment; a lifetime period of supervised release; a fine of \$10,000,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest; and a mandatory special assessment of \$100.

8. Defendant understands that the statutory mandatory minimum sentence that the Court must impose for a violation of Title 21,

1 United States Code, Sections 841(a)(1), (b)(1)(A)(vii) is: 10 years'
2 imprisonment, followed by a five-year period of supervised release,
3 and a mandatory special assessment of \$100.

4 9. Defendant understands that under 21 U.S.C. § 862a,
5 defendant will not be eligible for assistance under state programs
6 funded under the Social Security Act or Federal Food Stamp Act or for
7 federal food stamp program benefits, and that any such benefits or
8 assistance received by defendant's family members will be reduced to
9 reflect defendant's ineligibility.

10 10. Defendant understands that supervised release is a period
11 of time following imprisonment during which defendant will be subject
12 to various restrictions and requirements. Defendant understands that
13 if defendant violates one or more of the conditions of any supervised
14 release imposed, defendant may be returned to prison for all or part
15 of the term of supervised release authorized by statute for the
16 offense that resulted in the term of supervised release.

17 11. Defendant understands that, by pleading guilty, defendant
18 may be giving up valuable government benefits and valuable civic
19 rights, such as the right to vote, the right to possess a firearm,
20 the right to hold office, and the right to serve on a jury.
21 Defendant understands that he is pleading guilty to a felony and that
22 it is a federal crime for a convicted felon to possess a firearm or
23 ammunition. Defendant understands that the conviction in this case
24 may also subject defendant to various other collateral consequences,
25 including but not limited to revocation of probation, parole, or
26 supervised release in another case and suspension or revocation of a
27 professional license. Defendant understands that unanticipated
28

1 collateral consequences will not serve as grounds to withdraw
2 defendant's guilty plea.

3 12. Defendant and his counsel have discussed the fact that, and
4 defendant understands that, if defendant is not a United States
5 citizen, the conviction in this case makes it practically inevitable
6 and a virtual certainty that defendant will be removed or deported
7 from the United States. Defendant may also be denied United States
8 citizenship and admission to the United States in the future.
9 Defendant understands that while there may be arguments that
10 defendant can raise in immigration proceedings to avoid or delay
11 removal, removal is presumptively mandatory and a virtual certainty
12 in this case. Defendant further understands that removal and
13 immigration consequences are the subject of a separate proceeding and
14 that no one, including his attorney or the Court, can predict to an
15 absolute certainty the effect of his conviction on his immigration
16 status. Defendant nevertheless affirms that he wants to plead guilty
17 regardless of any immigration consequences that his plea may entail,
18 even if the consequence is automatic removal from the United States.

19 FACTUAL BASIS

20 13. Defendant admits that defendant is, in fact, guilty of the
21 offense to which defendant is agreeing to plead guilty. Defendant
22 and the USAO agree to the statement of facts provided below and agree
23 that this statement of facts is sufficient to support a plea of
24 guilty to the charge described in this agreement and to establish the
25 Sentencing Guidelines factors set forth in paragraph 15 below but is
26 not meant to be a complete recitation of all facts relevant to the
27 underlying criminal conduct or all facts known to either party that
28 relate to that conduct.

1 On or about May 10, 2019, within the Central District of
 2 California, defendant knowingly possessed with intent to distribute
 3 at least 50 grams of methamphetamine, a Schedule II controlled
 4 substance. In addition to methamphetamine, defendant also possessed
 5 with intent to distribute heroin, as well as over \$13,000 cash in
 6 various denominations, plastic baggies and scales, and pay-owe sheets
 7 used to track drug debts owed from customers.

8 At the time defendant possessed with intent to distribute the
 9 above-referenced methamphetamine and heroin, he had previously been
 10 convicted of a serious drug felony, namely, possession with intent to
 11 distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1),
 12 (b)(1)(B)(viii), in United States v. Rafael Ochoa, CR 10-00628-007-
 13 PHX-NVW, in the United States District Court for the District of
 14 Arizona. At the time defendant possessed with intent to distribute
 15 the above-referenced methamphetamine and heroin, he was on both
 16 federal supervised release as well as California state probation.

17 SENTENCING FACTORS AND AGREED-UPON SENTENCE

18 14. Defendant understands that in determining defendant's
 19 sentence the Court is required to calculate the applicable Sentencing
 20 Guidelines range and to consider that range, possible departures
 21 under the Sentencing Guidelines, and the other sentencing factors set
 22 forth in 18 U.S.C. § 3553(a). Defendant understands that the
 23 Sentencing Guidelines are advisory only.

24 15. Defendant and the USAO agree to the following applicable
 25 Sentencing Guidelines factors:

26	Base Offense Level:	[24]	[U.S.S.G. § 2D1.1(a)(5), (c)(8)]
27	Adjustments [Career Offender]:	[37]	[U.S.S.G. § 4D1.1(b) (1)]

1 Acceptance of Responsibility: [-3] [U.S.S.G. § 3E1.1(a-b)]

2 Total Offense Level: [34]

3 16. The parties agree not to argue that any other specific
4 offense characteristics, adjustments, or departures be imposed.

5 17. Defendant and the USAO agree that, taking into account the
6 factors listed in 18 U.S.C. § 3553(a)(1)-(7), an appropriate
7 disposition of this case is that the Court impose a sentence of: 120
8 months' imprisonment; 5 years' supervised release with conditions to
9 be fixed by the Court; and a \$100 special assessment. The parties
10 also agree that no prior imprisonment (other than credits that the
11 Bureau of Prisons may allow under 18 U.S.C. § 3585(b)) may be
12 credited against this stipulated sentence, including credit under
13 Sentencing Guideline § 5G1.3.

14 WAIVER OF CONSTITUTIONAL RIGHTS

15 18. Defendant understands that by pleading guilty, defendant
16 gives up the following rights:

- 17 a. The right to persist in a plea of not guilty.
- 18 b. The right to a speedy and public trial by jury.
- 19 c. The right to be represented by counsel - and if
20 necessary have the Court appoint counsel -- at trial. Defendant
21 understands, however, that, defendant retains the right to be
22 represented by counsel - and if necessary have the Court appoint
23 counsel - at every other stage of the proceeding.
- 24 d. The right to be presumed innocent and to have the
25 burden of proof placed on the government to prove defendant guilty
26 beyond a reasonable doubt.
- 27 e. The right to confront and cross-examine witnesses
28 against defendant.

1 f. The right to testify and to present evidence in
2 opposition to the charges, including the right to compel the
3 attendance of witnesses to testify.

4 g. The right not to be compelled to testify, and, if
5 defendant chose not to testify or present evidence, to have that
6 choice not be used against defendant.

7 h. Any and all rights to pursue any affirmative defenses,
8 Fourth Amendment or Fifth Amendment claims, and other pretrial
9 motions that have been filed or could be filed.

10 WAIVER OF APPEAL OF CONVICTION

11 19. Defendant understands that, with the exception of an appeal
12 based on a claim that defendant's guilty plea was involuntary, by
13 pleading guilty defendant is waiving and giving up any right to
14 appeal defendant's conviction on the offense to which defendant is
15 pleading guilty. Defendant understands that this waiver includes,
16 but is not limited to, arguments that the statute to which defendant
17 is pleading guilty is unconstitutional, and any and all claims that
18 the statement of facts provided herein is insufficient to support
19 defendant's plea of guilty.

20 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

21 20. Defendant agrees that, provided the Court imposes a
22 sentence within the range specified in paragraph 17 above, defendant
23 gives up the right to appeal any portion of that sentence, and the
24 procedures and calculations used to determine and impose any portion
25 of that sentence.

26 21. The USAO agrees that, provided the Court imposes a sentence
27 within the range specified in paragraph 17 above, the USAO gives up
28 its right to appeal any portion of that sentence, and the procedures

1 and calculations used to determine and impose any portion of that
2 sentence.

3 RESULT OF WITHDRAWAL OF GUILTY PLEA

4 22. Defendant agrees that if, after entering a guilty plea
5 pursuant to this agreement, defendant seeks to withdraw and succeeds
6 in withdrawing defendant's guilty plea on any basis other than a
7 claim and finding that entry into this plea agreement was
8 involuntary, then (a) the USAO will be relieved of all of its
9 obligations under this agreement; and (b) should the USAO choose to
10 pursue any charge or any allegation of a prior conviction for a
11 serious drug or violent felony that was either dismissed or not filed
12 as a result of this agreement, then (i) any applicable statute of
13 limitations will be tolled between the date of defendant's signing of
14 this agreement and the filing commencing any such action; and
15 (ii) defendant waives and gives up all defenses based on the statute
16 of limitations, any claim of pre-indictment delay, or any speedy
17 trial claim with respect to any such action, except to the extent
18 that such defenses existed as of the date of defendant's signing this
19 agreement.

20 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

21 23. Defendant agrees that if the count of conviction is
22 vacated, reversed, or set aside, both the USAO and defendant will be
23 released from all their obligations under this agreement.

24 EFFECTIVE DATE OF AGREEMENT

25 24. This agreement is effective upon signature and execution of
26 all required certifications by defendant, defendant's counsel, and an
27 Assistant United States Attorney.

BREACH OF AGREEMENT

25. Defendant agrees that if defendant, at any time after the signature of this agreement and execution of all required certifications by defendant, defendant's counsel, and an Assistant United States Attorney, knowingly violates or fails to perform any of defendant's obligations under this agreement ("a breach"), the USAO may declare this agreement breached. All of defendant's obligations are material, a single breach of this agreement is sufficient for the USAO to declare a breach, and defendant shall not be deemed to have cured a breach without the express agreement of the USAO in writing. If the USAO declares this agreement breached, and the Court finds such a breach to have occurred, then: (a) if defendant has previously entered a guilty plea pursuant to this agreement, defendant will not be able to withdraw the guilty plea, (b) the USAO will be relieved of all its obligations under this agreement, and (c) the Court's failure to follow any recommendation or request regarding sentence set forth in this agreement will not provide a basis for defendant to withdraw defendant's guilty plea.

26. Following the Court's finding of a knowing breach of this agreement by defendant, should the USAO choose to pursue any charge or any allegation of a prior conviction for a serious drug or violent felony that was either dismissed or not filed as a result of this agreement, then:

a. Defendant agrees that any applicable statute of limitations is tolled between the date of defendant's signing of this agreement and the filing commencing any such action.

b. Defendant waives and gives up all defenses based on the statute of limitations, any claim of pre-indictment delay, or any

1 speedy trial claim with respect to any such action, except to the
2 extent that such defenses existed as of the date of defendant's
3 signing this agreement.

4 c. Defendant agrees that: (i) any statements made by
5 defendant, under oath, at the guilty plea hearing (if such a hearing
6 occurred prior to the breach); (ii) the agreed to factual basis
7 statement in this agreement; and (iii) any evidence derived from such
8 statements, shall be admissible against defendant in any such action
9 against defendant, and defendant waives and gives up any claim under
10 the United States Constitution, any statute, Rule 410 of the Federal
11 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal
12 Procedure, or any other federal rule, that the statements or any
13 evidence derived from the statements should be suppressed or are
14 inadmissible.

15 COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

16 OFFICE NOT PARTIES

17 27. Defendant understands that the Court and the United States
18 Probation and Pretrial Services Office are not parties to this
19 agreement and need not accept any of the USAO's sentencing
20 recommendations or the parties' agreements to facts, sentencing
21 factors, or sentencing. Defendant understands that the Court will
22 determine the facts, sentencing factors, and other considerations
23 relevant to sentencing and will decide for itself whether to accept
24 and agree to be bound by this agreement.

25 28. Defendant understands that both defendant and the USAO are
26 free to: (a) supplement the facts by supplying relevant information
27 to the United States Probation and Pretrial Services Office and the
28 Court, (b) correct any and all factual misstatements relating to the

1 Court's Sentencing Guidelines calculations and determination of
2 sentence, and (c) argue on appeal and collateral review that the
3 Court's Sentencing Guidelines calculations and the sentence it
4 chooses to impose are not error, although each party agrees to
5 maintain its view that the calculations and sentence referenced in
6 paragraphs **Error! Reference source not found.** and 16 are consistent
7 with the facts of this case. While this paragraph permits both the
8 USAO and defendant to submit full and complete factual information to
9 the United States Probation and Pretrial Services Office and the
10 Court, even if that factual information may be viewed as inconsistent
11 with the facts agreed to in this agreement, this paragraph does not
12 affect defendant's and the USAO's obligations not to contest the
13 facts agreed to in this agreement.

14 NO ADDITIONAL AGREEMENTS

15 29. Defendant understands that, except as set forth herein,
16 there are no promises, understandings, or agreements between the USAO
17 and defendant or defendant's attorney, and that no additional
18 promise, understanding, or agreement may be entered into unless in a
19 writing signed by all parties or on the record in court.

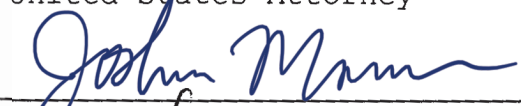
PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

30. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

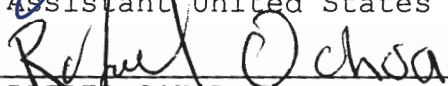
AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA


TRACY L. WILKISON
United States Attorney


JOSHUA O. MAUSNER
Assistant United States Attorney

1-4-2023
Date


RAFAEL OCHOA
Defendant

12-12-22
Date


RICHARD GOLDMAN
Deputy Federal Public Defender
Attorney for Defendant RAFAEL
OCHOA

12/14/2022
Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those

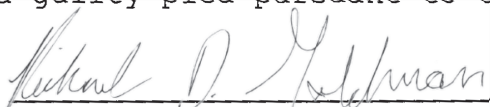
1 contained in this agreement. No one has threatened or forced me in
 2 any way to enter into this agreement. I am satisfied with the
 3 representation of my attorney in this matter, and I am pleading
 4 guilty because I am guilty of the charge and wish to take advantage
 5 of the promises set forth in this agreement, and not for any other
 6 reason.

7 
 8 RAFAEL OCHOA
 Defendant

12-12-22
 Date

10 CERTIFICATION OF DEFENDANT'S ATTORNEY

11 I am RAFAEL OCHOA's attorney. I have carefully and thoroughly
 12 discussed every part of this agreement with my client. Further, I
 13 have fully advised my client of his rights, of possible pretrial
 14 motions that might be filed, of possible defenses that might be
 15 asserted either prior to or at trial, of the sentencing factors set
 16 forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines
 17 provisions, and of the consequences of entering into this agreement.
 18 To my knowledge: no promises, inducements, or representations of any
 19 kind have been made to my client other than those contained in this
 20 agreement; no one has threatened or forced my client in any way to
 21 enter into this agreement; my client's decision to enter into this
 22 agreement is an informed and voluntary one; and the factual basis set
 23 forth in this agreement is sufficient to support my client's entry of
 24 a guilty plea pursuant to this agreement.

25 
 26 RICHARD GOLDMAN
 27 Deputy Federal Public Defender
 Attorney for Defendant RAFAEL
 28 OCHOA

12/14/2022

Date

CERTIFICATE OF SERVICE

I, **Mercedes Romero**, declare:

That I am a citizen of the United States and a resident of or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of 18; and that I am not a party to the above-titled action;

That I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of:

PLEA AGREEMENT FOR DEFENDANT RAFAEL OCHOA

☐ Placed in a closed envelope for collection and inter-office delivery, addressed as follows:

☐ Placed in a sealed envelope for collection and mailing via United States mail, addressed as follows:

☐ By hand delivery, addressed as follows:

☐ By facsimile, as follows:

☒ Via email

☐ By Federal Express, as follows:

This Certificate is executed on **January 6, 2023**, at Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct.



Mercedes Romero
Legal Assistant